IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1359 OF 2005
IN
SUIT NO.1961 OF 2003

Mrs.Mehrunnisa Mohd. Mustafa Basalat Chaudhary — Plaintiff

versus

Chaudhary Mohd. Rafiq Shaukat Ali and others — Defendants

Mr.Jayesh Bhatt for plaintiff.

Mr.Snehal Shah with Mr.Jayesh Vyas i/by Bilawala & Co. for defendants 1 to 4, 6 to 10, 23, 24, 27

CORAM : S.C.DHARMADHIKARI, J.

DATE : 20th June 2006

PC :

1. This Chamber Summons is for amendment of the plaint.

2. The plaintiff who has filed present Chamber Summons has instituted above suit for a declaration with regard to the Power of Attorney and for setting aside certain consent terms. She has also prayed for administration of the estate of late Shaukat Ali upon declaration that she has

6.73% share in the estate of deceased.

3. The plaintiff is the daughter of the deceased. She and defendants 5 to 10 as also defendants 11 to 19 are from Shankat and Shahadat Branch. Present Chamber Summons is taken out pursuant to certain disclosures made in interlocutory proceedings by defendants 1 to 3 on affidavit. Plaintiff has averred in the affidavit in support of present Chamber Summons that particulars and disclosures with regard to certain properties have compelled her to amend the plaint so as to include the properties and/or make claim with regard to sale proceeds of the same. A reference is made to several interlocutory proceedings and the affidavits filed therein.

4. It is contended that for a complete, effective and proper adjudication of the controversy in the suit the plaint be allowed to be amended in terms of the schedule. Certain averments need to be incorporated and documents which have come on record in interlocutory proceedings, have also to be annexed. Based upon this further declarations have to be claimed so also interlocutory reliefs.

5. This Chamber Summons is supported by defendants 5 and 10 whereas it is contested by defendants 1 to 3.

6. From the statement in the affidavit in reply it is apparent that defendants 1 to 3 are placing their version with regard to these properties after denying that they form part of estate of deceased or that they have purchased the same out of sale proceeds of the property which is more particularly described at Exhibit-B to the plaint.

7. After perusing these materials I am of the view that there is nothing which would prejudice the parties if the plaint is allowed to be amended. All that the plaintiff seeks to incorporate is details with regard to certain properties and assets which according to her form part of the estate of deceased. By merely allowing her to incorporate these averments it is not that the rights of the parties to the suit are being adjudicated upon. The cause of action, as pleaded, has not been changed at all. The structure of suit is also not undergoing any change. There are no malafides alleged either.

Save and except stating that plaintiff has filed this application belatedly and after the disclosures were made in the interlocutory proceedings, I find nothing in the statements made in the affidavit in reply.

8. In my view, all contentions on merits of the controversy so also plea of limitation insofar as certain transactions are always open for being urged and subject to such pleas being allowed to be raised, an amendment can always be granted.

9. Consequently Chamber Summons is made absolute in terms of prayer clause (a). Amendment to be carried out within a period of two weeks from today. Amended plaint to be served four weeks thereafter.

(S.C.DHARMADHIKARI, J.)